IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 72 of 2003
(Old No. 1165/91)

The Commissioner, Sales Tax
U.P., Lucknow. .....Applicant/revisionist

Versus

S/S Bajpur Cooperative Sugar Factory Ltd
Bajpur, Nainital ...Opposite Party/Respondent

Shri Pitamber Maulekhi, Additional Advocate General for the revisionist.
Shri C.K. Sharma, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 11(1) of U.P. Sales Tax Act, 1948, is directed against the judgment and award dated 17.05.1991 passed in Second Appeal No. 245 of 1989 by Sales Tax Tribunal, Haldwani.

2. The revision involves following question of law:- *Whether in the facts and circumstances of the case, the Sales Tax Tribunal was justified in holding that the interest was not payable under Section 8 of U.P. Sales Tax Act, 1948 on the declared turnover of the assessee?*

3. I heard learned counsel for the parties.

4. Brief facts of the case are that the respondent/dealer is a manufacturer of sugar in cooperative sector and sells the said item. The present revision pertains to the assessment year 1982-83. Perusal of the impugned order shows that the Assessing Officer imposed interest under Section 8(1) of U.P.

Sales Tax Act, 1948 on the tax of the sale of the gunny bags.

5. Learned counsel for the revisionist argued that the tribunal has erred in law in holding that the interest is not payable on the admitted sale. On perusal of the impugned order and record, the argument appears to be misconceived for the reason that the dealer has never admitted the liability to pay tax on transfer of gunny bags with the sugar. It is only the admitted tax which attracts imposition of interest if such tax is not paid within time allowed under the Act, In the present case, liability to pay the tax is not accepted in respect of gunny bags, which infact are not sold but it is the sugar which is the item sold.

6. Therefore, this Court is of the view that the tribunal has committed no error of law in setting aside the order, imposing the interest on the tax. Section 8(1) of U.P. Sales Tax Act, 1948, provides that the tax admitted shall be deposited within the time prescribed and in default 2% per mensem interest shall be paid thereon. Since the liability to pay tax on the gunny bags was disputed by the dealer, as such the tribunal has committed no error of law in setting aside the imposition of interest. Accordingly, the question stands answered in favour of the dealer.

7. Revision is dismissed.

(Prafulla C. Pant, J.)

Dt: 20th March, 2006
Sweta